

Attorney or Party Name, Address, Telephone & FAX Nos. State Bar No. & Email Address Ali R. Nader, SBN 183134 Amir A. Nader, SBN 277014 16530 Ventura Blvd., Suite 405 Encino, CA 91436 (818) 788-5008 Fax: (818) 788-8846	FOR COURT USE ONLY
<input checked="" type="checkbox"/> Attorney for Debtor(s) <input type="checkbox"/> Debtor(s) appearing without an attorney	
<b>UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA</b>	
In re:  Corazon Manalo Victoriano	CASE NO.: 2:12-bk-40850-WB CHAPTER: 13 <b>DEBTOR'S NOTICE OF MOTION AND MOTION TO AVOID JUNIOR LIEN ON PRINCIPAL RESIDENCE[11 U.S.C. § 506(d)]</b> DATE: January 10, 2013 TIME: 2:00 p.m. COURTROOM: 1545 FLOOR: 15th
Debtor(s).	

1. TO: **NAVY FEDERAL CREDIT UNION**

2. NOTICE IS HEREBY GIVEN that on the above date and time and in the indicated courtroom, Movant in the above-captioned matter will move this court for an Order granting the relief set forth in the Motion and accompanying supporting documents served and filed herewith.

3. Hearing Location: ☒ 255 East Temple Street, Los Angeles ☐ 411 West Fourth Street, Santa Ana  
☐ 21041 Burbank Boulevard, Woodland Hills ☐ 1415 State Street, Santa Barbara  
☐ 3420 Twelfth Street, Riverside

4. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one. *(If you do not have an attorney, you may wish to consult one.)*

5. **Deadline for Opposition Papers:** This Motion is being heard on regular notice pursuant to LBR 9013-1. If you wish to oppose this Motion, you must file a written response with the court and serve a copy of it upon the Movant or Movant's attorney at the address set forth above no less than 14 days prior to the above hearing date. If you fail to file a written response to this Motion within such time period, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.

6. **Hearing Date Obtained Pursuant to Judge's Self-Calendaring Procedure:** The undersigned hereby verifies that the above hearing date and time were available for this type of Motion according the judge's self-calendaring procedures.

Date: December 14, 2012

Nader Law Firm, APLC

Printed name of law firm (if applicable)

Amir A. Nader 277014

/s/ Amir A. Nader

Printed Name of Individual Debtor or Attorney for Debtor

Signature of Individual Debtor or Attorney for Debtor

**MOTION TO AVOID JUNIOR LIEN ON PRINCIPAL RESIDENCE [11 U.S.C. § 506(d)]**

(DEBTOR: Corazon Manalo Victoriano)

**NAME OF CREDITOR HOLDING JUNIOR LIEN ("Respondent"): NAVY FEDERAL CREDIT UNION**

**1. Property at Issue:** Debtor moves to avoid the junior deed of trust, mortgage or other encumbrance (Lien) encumbering the following real property (Property), which is the principal residence of debtor.

Street Address: **243 Calle Luna**

Unit Number: \_\_\_\_\_

City, State, Zip Code: **Walnut, CA 91789**

Legal description of Property for document recording number (including county of recording):

County: **Los Angeles**

APN No: **8734-009-029**; Lot: **61** Tract No: **31921** Region/Cluster **06/06149**

☐ See attached page for legal description of Property or document recording number.

**2. Case History:**

a. A voluntary petition under Chapter ☐ 7 ☐ 11 ☐ 12 ☒ 13 was filed on (specify petition date): **9/10/2012**

b. ☐ An Order of Conversion to chapter 13 was entered on (specify date): \_\_\_\_\_

**3. Grounds for Avoidance of Junior Lien:**

a. As of **9/10/2012**, the Property is subject to the following liens in the amounts specified securing the debt against the Property, that the debtor seeks to have treated as indicated:

(1) **Bank of America, N.A.** in the amount of \$ **386,322.62**

(2) **Navy Federal Credit Union** in the amount of \$ **136,027.67** ☒ is ☐ is not to be avoided;

(3) (Name of holder of 3rd lien) \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ ☐ is ☐ is not to be avoided;

☐ See attached page for additional lien(s).

As of **9/10/2012**, Property is worth no more than (value per valuation/appraisal) \$ **355,000.00**.

b. As a result, Respondent's Lien encumbering the Property is wholly unsecured.

**c. Evidence in Support of Motion:**

(1) ☒ The amount of the lien identified in paragraph 3(a)(1) is based on Proof of Claim/Deed of Trust, attached hereto and identified as Exhibit A.

(2) ☒ The amount of the lien identified in paragraph 3(a)(2) is based on Proof of Claim/Deed of Trust, attached hereto and identified as Exhibit B.

(3) ☐ The amount of the lien identified in paragraph 3(a)(3) is based on (type of evidence) \_\_\_\_\_, attached hereto and identified as Exhibit \_\_\_\_\_.

(4) ☒ The relative priority of the liens encumbering the Property is established by evidence attached as Exhibit A + B.

(5) ☒ The value of the Property from paragraph 3(b) is based on Real Property Appraisal, attached as Exhibit C.

(6) ☒ Debtor submits the attached Declaration(s). **Declaration of Debtor Corazon Manalo Victoriano; Declaration of Karen Iwamiya, certified appraiser; Declaration of Amir A. Nader**

(7) ☒ Other evidence **Resume of Karen Iwamiya**: attached as Exhibit C-1.

**d. WHEREFORE, Debtor prays that this Court issue an Order granting the this Motion and establishing that:**

(1) The Property is valued at no more than (requested value) \$ 355,000.00.

(2) No payments are to be made on the secured claim of the Respondent, and regular mortgage maintenance payments are not to be made, before the Debtor's ☒ completion of the chapter 13 plan, or ☒ receipt of a chapter 13 discharge.

(3) Respondent's(s') claim on the junior position lien(s) shall be allowed as a nonpriority general unsecured claim(s) in the amount per the filed Proof of Claim.

(4) The avoidance of the Respondent's(s') junior lien(s) is contingent upon: The Debtor's ☒ completion of the chapter 13 plan, or ☒ receipt of a chapter 13 discharge.

(5) The Respondents shall retain its/their lien(s) in the junior position for the full amount due under the corresponding note and lien in the event of either the dismissal of the Debtor's chapter 13 case, the conversion of the Debtor's chapter 13 case to any other chapter under the United States Bankruptcy Code, or if the Property is sold or refinanced prior to the Debtor's ☒ completion of the chapter 13 plan, or ☒ receipt of a chapter 13 discharge.

(6) In the event that the holder of the first position lien or any senior lien on the Property forecloses on its interest and extinguishes the Respondent's(s') lien rights prior to the Debtor's completion of the chapter 13 plan and receipt of a chapter 13 discharge, the Respondent's(s') lien(s) shall attach to the proceeds greater than necessary to pay the senior lien, if any, from the foreclosure sale, subject to the priority of any such junior lien(s).

e. ☐ See attached continuation page for additional provisions.

Date: December 14, 2012

Respectfully submitted,

By: /s/ Amir A. Nader

Signature of Debtor or Attorney for Debtor

Name: Amir A. Nader

Printed Name of Debtor or Attorney for Debtor

**DECLARATION OF CORAZON MANALO VICTORIANO**

I, CORAZON MANALO VICTORIANO, declare as follows:

1. That I am the Debtor in the Chapter 13 proceeding herein assigned case number 2:12-BK-40850-wb. If called upon as witnesses I could and would testify competently to the following facts from our own personal knowledge.
2. That the First Deed of Trust on our rental property located at 243 Calle Luna, Walnut CA, 91789, is held by Bank of America, N.A., with a lien against my property in the amount of approximately \$386,322.62. A true and correct copy of the Proof of Claim filed by Bank of America, N.A., and Deed of Trust is attached hereto as Exhibit "A."
3. That the Second Trust Deed on my residence is held by Navy Federal Credit Union, with a lien against my property in the amount of approximately \$136,027.67. A true and correct copy of the Proof of Claim and Deed of Trust filed by Navy Federal Credit Union is attached hereto as Exhibit "B."
4. I believe that the value of my property is no more than \$355,000.00 based my understanding as homeowner of the values in the neighborhood, and based on the Appraisal performed on the property. A true and correct copy of the Appraisal is attached hereto as Exhibit "C."
5. The encumbrances by the First Deed of Trust exceed the fair market value of the property.
6. Accordingly, I respectfully request that the Second Trust Deed held by Navy Federal Credit Union be treated as fully unsecured and to be reconveyed at the time of discharge of our Chapter 13 Case.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 14, 2012, at Encino, California.

/s/ Corazon Manalo Victoriano  
Corazon Manalo Victoriano

**DECLARATION OF AMIR A. NADER**

I, Amir A. Nader, hereby declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am employed by NADER LAW FIRM, APLC, attorneys for Debtor in the above captioned matter. I have personal knowledge of the facts set forth herein and, if called upon to do so, I would and could competently testify thereto.
2. That I am licensed to practice law before this United States Bankruptcy Court;
3. That on September 10, 2012, this office caused the filing of the debtors Chapter 13 case;
4. The within Notice of Motion and Motion to Avoid Junior Lien on Principal Residence [11 U.S.C. §506(d)] shall be heard on January 10, 2013 at 2:00 P.M., in Courtroom 1545 located at 255 E. Temple Ave, Los Angeles, CA 90012.
5. That the entire debt of \$136,027.67 owed to Navy Federal Credit Union is at issue the present Motion to Avoid Junior Lien on Principal Residence. Thus, it is respectfully requested that the Debtor be allowed to extinguish and reconvey the Second Deed of Trust holder Navy Federal Credit Union.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 14, 2012, at Encino, California.

/s/ Amir A. Nader

Amir A. Nader  
Attorney for Debtor/Movant

**Supplemental Addendum**

File No. Victoriano

Borrower	N/A				
Property Address	243 Calle Luna				
City	Walnut	County	Los Angeles	State	CA Zip Code 91789
Client	Cora Victoriano				

**DECLARATION OF Karen Iwamiya**

I, Karen Iwamiya, declare that I am a certified real estate appraiser. All of the following is true and correct to the best of my knowledge and belief, and if called upon as a witness I could and would testify (for an additional fee) competently to the following facts from my own personal knowledge:

1. I am familiar with the concepts of evaluation and appraisal of residential property in southern California. I have taken, and successfully passed the appropriate appraisal courses. a copy of my resume is attached to this appraisal report that I prepared and if incorporated herein by this reference as "Exhibit C1";
2. The comparable sales approach is the appraisal method most often utilized in evaluating the fair market value of residential property. This approach helps estimate the value by comparing sales of similar real property to the subject property. the most crucial factors used by an appraiser in selecting comparable sales are date of sale, proximity to the subject property, site size, improvements living area, room count and amenities, i.e., swimming pool, spa, views, remodeling. etc.
3. The debtor's residence is stated as: (hereinafter the "subject property"). The subject property has 1457 sq. ft., 3 BD - 2 BA, and built-in 1975.
4. In my opinion the value is/was estimated at: \$355,000 based on the comparable sales approach to value. True and correct copies of the appraisal report showing comparable sales, a cost approach to value and a location map.

I, Karen Iwamiya, declare under penalty of perjury according to the laws of the United States of America that the foregoing is true and correct and that this Declaration is executed on this 20th day of August at Los Angeles, California.

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
16530 Ventura Blvd., Suite 405  
Encino, CA 91436

A true and correct copy of the foregoing document entitled (*specify*): Debtor's Notice of Motion and Motion to Avoid Junior Lien on Principal Residence will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 12/14/12, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Nancy K Curry (TR) [ecfnc@trustee13.com](mailto:ecfnc@trustee13.com)

Mehrdaud Jafarnia [bknotice@mccarthyholthus.com](mailto:bknotice@mccarthyholthus.com), [mjafarnia@mccarthyholthus.com](mailto:mjafarnia@mccarthyholthus.com)

United States Trustee (LA) [ustpregion16.la.ecf@usdoj.gov](mailto:ustpregion16.la.ecf@usdoj.gov)

Jennifer H Wang [jwang@cookseylaw.com](mailto:jwang@cookseylaw.com), [jodom@cookseylaw.com](mailto:jodom@cookseylaw.com)

**2. SERVED BY UNITED STATES MAIL:**

On 12/14/12, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☒ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on       , I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

December 14, 2012      Ali R. Nader 183134  
\_\_\_\_\_  
Date                      Printed Name

\_\_\_\_\_  
/s/ Ali R. Nader  
Signature

2nd lienholder (name) and Agent for Service of Process (name and address)  Navy Federal Credit Union c/o THOMAS J CONNELLY 820 FOLLIN LN VIENNA VA 22180	Address from: <input type="checkbox"/> Proof of Claim <input checked="" type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>specify</i>	Delivery Method <input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Certified Mail - Tracking# _____ <input type="checkbox"/> Overnight Mail - Tracking# _____ Carrier Name: _____
2nd lienholder  Navy Federal Credit Union PO Box 3000 Merrifield, VA 22119-3000	Address from: <input checked="" type="checkbox"/> Proof of Claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>specify</i>	Delivery Method <input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Certified Mail - Tracking# _____ <input type="checkbox"/> Overnight Mail - Tracking# _____ Carrier Name: _____
Navy Federal Credit Union PO Box 3700 Merrifield, VA 22119	Address from: <input type="checkbox"/> Proof of Claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input checked="" type="checkbox"/> Other: Matrix	Delivery Method <input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Certified Mail - Tracking# _____ <input type="checkbox"/> Overnight Mail - Tracking# _____ Carrier Name: _____

Alternative/Additional Address (name and address)  Honorable Judge Julia W. Brand 255 E. Temple Street Suite 1382 / Courtroom 1375 Los Angeles, CA 90012	Address from: <input type="checkbox"/> Proof of Claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>specify</i>	Delivery Method <input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Certified Mail - Tracking# _____ <input type="checkbox"/> Overnight Mail - Tracking# _____ Carrier Name: _____
Alternative/Additional Address (name and address)  Corazon Manalo Victoriano 243 Calle Luna Walnut, CA 91789	Address from: <input type="checkbox"/> Proof of Claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>specify</i>	Delivery Method <input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Certified Mail - Tracking# _____ <input type="checkbox"/> Overnight Mail - Tracking# _____ Carrier Name: _____



**II. SERVED BY UNITED STATES MAIL, CERTIFIED MAIL OR OVERNIGHT MAIL** (indicate method for each person or entity served):

(Attached page to Proof of Service of Document-please include any additional or alternative addresses and attach additional pages if needed)

(Certified Mail required for service on a national bank.)

1st lienholder (name and address)  Bank of America, N.A c/o Brian Moynihan, CEO 101 S. Tryon St., Charlotte, NC 28202	Address from: <input type="checkbox"/> Proof of Claim <input type="checkbox"/> Secretary of State <input checked="" type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>specify</i>	Delivery Method <input checked="" type="checkbox"/> US Mail <input checked="" type="checkbox"/> Certified Mail - 7011 1150 0001 Tracking# <input type="checkbox"/> Overnight Mail - 1956 4789 Tracking# Carrier Name:
1st lienholder  Bank of America P.O. Box 660933 Dallas, TX 75266-0933	Address from: <input checked="" type="checkbox"/> Proof of Claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>specify</i>	Delivery Method <input checked="" type="checkbox"/> US Mail <input checked="" type="checkbox"/> Certified Mail - 7011 1150 0001 Tracking# <input type="checkbox"/> Overnight Mail - 1956 4796 Tracking# Carrier Name:
1st lienholder  Bank of America, N.A 150 N College St, NC1-028-17-06 Charlotte, NC 28255	Address from: <input type="checkbox"/> Proof of Claim <input checked="" type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>specify</i>	Delivery Method <input checked="" type="checkbox"/> US Mail <input checked="" type="checkbox"/> Certified Mail - 7011 1150 0001 Tracking# <input type="checkbox"/> Overnight Mail - 1956 4802 Tracking# Carrier Name:
Bank of America, N.A c/o CT Corporation System 818 W. Seventh St., Los Angeles, CA 90017	Address from: <input type="checkbox"/> Proof of Claim <input checked="" type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>specify</i>	Delivery Method <input checked="" type="checkbox"/> US Mail <input checked="" type="checkbox"/> Certified Mail - 7011 1150 0001 Tracking# <input type="checkbox"/> Overnight Mail - 1956 4819 Tracking# Carrier Name:
Bank of America, NA P.O. Box 660933 Dallas, TX 75266-0933	Address from: <input type="checkbox"/> Proof of Claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input checked="" type="checkbox"/> Other: Matrix	Delivery Method <input checked="" type="checkbox"/> US Mail <input checked="" type="checkbox"/> Certified Mail - 7011 1150 0001 Tracking# <input type="checkbox"/> Overnight Mail - 1956 4826 Tracking# Carrier Name:
Bank Of America, N.A. 450 American St Simi Valley, CA 93065	Address from: <input type="checkbox"/> Proof of Claim <input type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input checked="" type="checkbox"/> Other: Matrix	Delivery Method <input checked="" type="checkbox"/> US Mail <input checked="" type="checkbox"/> Certified Mail - 7011 1150 0001 Tracking# <input type="checkbox"/> Overnight Mail - 1956 483 Tracking# Carrier Name:

2nd lienholder (name and address)  Navy Federal Credit Union 820 FOLLIN LANE VIENNA VA22180	Address from: <input type="checkbox"/> Proof of Claim <input checked="" type="checkbox"/> Secretary of State <input type="checkbox"/> FDIC website <input type="checkbox"/> Other: <i>specify</i>	Delivery Method <input checked="" type="checkbox"/> US Mail <input type="checkbox"/> Certified Mail - Tracking# <input type="checkbox"/> Overnight Mail - Tracking# Carrier Name:
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